IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

SHARON O'FLAHERTY
9855 Little Mountain Road
Concord, Ohio 44060

Plaintiff,

vs.

EATON CORPORATION
1000 Eaton Boulevard
Cleveland, OH 44122

and

EATON CORPORATION PLC
1000 Eaton Boulevard
Cleveland, OH 44122

and

ALEXANDER CUTLER
C/O Eaton Corporation PLC
1000 Eaton Boulevard
Cleveland, OH 44122

and

MARK MCGUIRE
C/O Eaton Corporation PLC
1000 Eaton Boulevard
Cleveland, OH 44122

and

LATHAM AND WATKINS LLP
885 Third Avenue
New York, NY 10022-4834

and

CASE NO.

Judge: PAMELA A BARKER

CV 13 812107

COMPLAINT

(Jury Demand Endorsed Hereon)

JAMES BRANDT
C/O Latham and Watkins LLP
885 Third Avenue
New York, NY 10022-4834

and

VIC LEO
2315 Country Brook Drive
Hinckley, Ohio 44233

Defendants.

Plaintiff Sharon O'Flaherty ("O'Flaherty"), for her Complaint against Eaton Corporation and Eaton Corporation PLC (Eaton Corporation and Eaton Corporation PLC are collectively referred to herein as "Eaton"), Alexander Cutler, Mark McGuire, Latham & Watkins and James Brandt (Latham & Watkins and James Brandt are collectively referred to as "L&W") and Vic Leo (all defendants are collectively referred to herein as "Defendants") alleges as follows:

INTRODUCTION

1. Plaintiff Sharon O'Flaherty, a licensed attorney, was employed by Defendant Eaton in its legal department for more than twenty years. From approximately 2004 through January 2011, she worked with attorney Vic Leo, her direct supervisor at Eaton, in the Frisby litigation, described herein.

2. At all times, O'Flaherty practiced law and performed the duties of her employment with Eaton ethically and honestly and within the bounds of the law and the Rules of Professional Conduct.

3. On May 17, 2012, Eaton fired O'Flaherty; Eaton then publicly and falsely stated that she had been fired to "to help restore the integrity of (Eaton's) processes and (Eaton's) commitment to excellence."

4. In fact, Defendant Eaton terminated O'Flaherty's employment for the purpose of defrauding the Mississippi Courts and its opposing parties in Frisby litigation regarding the reason for Eaton's discovery abuses, and/or because O'Flaherty, unlike others in the Eaton legal department, had preserved damaging evidence and attempted to comply with the orders of the Mississippi Court, and/or for other illegal reasons.

PARTIES

5. Plaintiff Sharon O'Flaherty, is a resident of Ohio.

6. O'Flaherty is an attorney licensed to practice law in the state of Ohio.

7. From approximately February 28, 1989 until approximately May 17, 2012, O'Flaherty was employed by Eaton as an attorney in Eaton's legal department.

8. From approximately 2005 until the termination of her employment at Eaton, O'Flaherty held the title of Counsel- Litigation in the Eaton legal department.

9. Defendant Vic Leo, is an attorney licensed to practice law in the State of Ohio and was, during all relevant times, O'Flaherty's direct supervisor in the Eaton legal department.

10. From approximately 2006 until approximately May 17, 2012, Defendant Vic Leo held the title of Vice President and Chief Counsel- Litigation in the Eaton legal department.

11. Defendant Eaton Corporation PLC was incorporated in Ireland in 2012.

12. Defendant Eaton Corporation, was incorporated in 1911 in New Jersey.

13. Eaton Corporation PLC is the successor-in-interest to Eaton Corporation.

14. Eaton Corporation and Eaton Corporation PLC have their principal place of business in Cuyahoga County, Ohio.

15. At all relevant times, Defendant Alexander M. Cutler, also known as "Sandy Cutler" was Eaton's Chief Executive Officer (hereafter "Cutler").

16. Defendant Mark McGuire is an attorney licensed to practice law in the state of Ohio and is Eaton's Executive Vice President and General Counsel (hereafter, "McGuire").

17. Defendant McGuire reports directly to Defendant Cutler.

18. Defendant Latham & Watkins LLP ("L&W") is a law firm with its principal place of business in New York, New York.

19. At all relevant times, Defendant James Brandt was a managing member, partner, agent and/or employee of Latham & Watkins.

STATEMENT OF FACTS

The Georgeff Consulting Agreement and the $1.56 Million Sanction

20. In approximately 2004, O'Flaherty was assigned to work on a potential trade secret lawsuit Eaton was considering filing against Jeffry D. Frisby, Frisby Aerospace, LLC, and a group of engineers who had been formerly employed in Eaton's plant in Jackson, Mississippi.

21. On July 9, 2004, Eaton filed a complaint in the Frisby litigation, commencing the action titled *Eaton Corporation, et al. v. Jeffry D. Frisby, et al.*, Civil Action No. 251-04-642CIV, pending in the Circuit Court of Hinds County, Mississippi, First Judicial District, before Judge Bobby DeLaughter (hereafter, "the Frisby litigation").

22. Until he was terminated by Eaton on or about May 17, 2012, Leo was the senior in-house Eaton lawyer with responsibility for management of the Frisby litigation.

23. Until January 2011, O'Flaherty was assigned to work on the Frisby litigation, reporting to Leo.

24. Before O'Flaherty became involved in the Frisby litigation, Eaton, through its in-house lawyer, Leo, and outside counsel Michael Allred ("Allred") of Mississippi, had entered into a consulting agreement with Milan Georgeff, a witness in the Frisby litigation (hereafter, "consulting agreement.")

25. O'Flaherty had no knowledge of the consulting agreement when it was executed.

26. In or before February 2005, Allred and Eaton's other outside counsel, Michael Schaalman (hereafter "Schaalman") of the Milwaukee law firm Quarles & Brady, prepared and served answers to discovery propounded upon Eaton by the Frisby defendants.

27. Eaton and O'Flaherty appropriately relied upon Allred and Schaalman to properly and truthfully answer the discovery requests.

28. In answering the discovery propounded by the Frisby defendants, Eaton did not produce the consulting agreement.

29. Eaton and O'Flaherty appropriately relied upon Allred and Schaalman to properly and truthfully answer the discovery requests.

30. One of Eaton's answers identified an agreement with Georgeff and "communications" Eaton had with Georgeff, but asserted the joint defense privilege.

31. As Eaton itself later stated to the Supreme Court of Mississippi, in overseeing the work of Eaton's outside counsel, O'Flaherty properly relied on outside counsel to answer the discovery requests and to decide when to assert privilege with regard thereto.

32. As Eaton itself stated to the Supreme Court of Mississippi, O'Flaherty had the right to rely on outside counsel who repeatedly said they would produce the agreement.

33. The Frisby defendants subsequently obtained a copy of the consulting agreement from Georgeff in different litigation, with Eaton's consent.

34. In 2006, the defendants in the Frisby litigation moved for sanctions against Eaton on the basis that the consulting agreement Leo and Eaton had entered into with Georgeff was illegal.

35. The Mississippi court, through a special master, subsequently found that Allred had provided inaccurate and misleading discovery responses.

36. In 2006, the Mississippi Court, sanctioned Eaton, Allred and Schaalman sanctioned $1.56 million dollars, finding that Eaton had provided inaccurate and misleading discovery responses in the Frisby litigation.

37. Eaton did not terminate Schaalman or his law firm as a result of the $1.56 million sanction.

Eaton Retains Peters

38. Allred withdrew as counsel for Eaton in 2006 at Leo's request.

39. O'Flaherty contacted attorneys she knew in the region in an effort to find reputable, qualified Mississippi attorneys to represent Eaton in the Frisby litigation.

40. O'Flaherty presented Leo with a list of attorneys who had been recommended based upon their legal abilities.

41. Allred recommended to Leo and Eaton that it retain Mississippi attorney Ed Peters (hereafter "Peters") to work on the Frisby litigation.

42. One of the reasons Allred recommended Peters to Eaton was that Peters was "the one person who is the closest possible associate of Judge DeLaughter," who was then presiding over the Frisby litigation.

43. Ed Peters was not on the list of attorneys O'Flaherty presented to Leo.

44. Leo and Eaton retained Peters to work on the Frisby litigation.

45. For the remainder of the time O'Flaherty worked on the Frisby case, Leo: had meetings, conversations, and email exchanges with outside counsel Peters, Schaalman and others, as well as consultants and experts, without involving O'Flaherty; often excluded O'Flaherty from substantive discussions about strategy in the case; and often relegated her to an administrative role in the case.

46. Throughout that time, O'Flaherty was copied on some emails that indicated that Peters may have had communications with Judge DeLaughter's staff concerning scheduling matters, but she did not suspect that Peters, Schaalman, or Leo had or would engage in illegal or unethical conduct with regard to the Court in the Frisby litigation.

47. All of the information known to O'Flaherty regarding Peters' communications with the Court was the result of emails circulated among the Eaton legal team.

48. As Eaton stated to the Mississippi Supreme Court, practice concerning *ex parte* contacts differs widely from jurisdiction to jurisdiction, and O'Flaherty was entitled to rely upon outside counsel to know what was acceptable practice in Mississippi.

49. Throughout the Frisby litigation, Leo met regularly or periodically with the General Counsel and the CEO to discuss the Frisby litigation; O'Flaherty was not included in those meetings.

50. In December 2007, the media reported that Peters was under investigation for improperly influencing Judge DeLaughter in another matter.

51. In January 2008, Judge DeLaughter recused himself from the Frisby case and resigned from the bench.

52. DeLaughter was replaced by Judge Swan Yerger as the presiding judge in the Frisby litigation.

53. Judge Yerger ordered an inquiry as to whether Peters had engaged in improper *ex parte* communications with Judge DeLaughter.

54. Judge Yerger, through a Special Master appointed to the Court, reviewed email exchanges, primarily by and between Schaalman, Leo and Peters, deposition testimony, and other documents produced during the Peters/DeLaughter inquiry, and concluded that Peters had engaged in improper *ex parte* communications with Judge DeLaughter about the Frisby matter, and that Eaton had knowledge of Peters' misconduct.

55. On December 22, 2010, Judge Yerger dismissed Eaton's claims (but allowed Frisby's counterclaims to proceed) as a sanction.

56. In dismissing Eaton's claims, the Court agreed with the Special Master Report and Recommendation that found that "Eaton's misconduct has prejudiced the administration of justice and the integrity of (the) proceedings. Eaton paid and promised employment to Georgeff to provide exaggerated and false testimony against the market competitor. It exploited this misconduct to mislead the government into launching a criminal investigation of Frisby. Eaton has manipulated the legal system by obstructing discovery. . . . Further, the evidence leads to the conclusion that Ed Peters acted covertly

as Eaton's agent and counsel to advance Eaton's interest in improper *ex parte* communications with the court. It further shows that Eaton's in-house counsel, including Executive Vice President and General Counsel Mark McGuire and Vice President and Chief Litigation Counsel Vic Leo, had either actual or constructive knowledge that Peters was engaging in ongoing improper ex parte communications with Judge DeLaughter. Moreover, Eaton's outside counsel Michael Schaalman shared that knowledge."

57. Eaton did not write up, suspend, place on probation, terminate or otherwise discipline Leo or McGuire for their conduct leading to the sanction of dismissal.

58. Eaton did not terminate Schaalman or his law firm as a result of the sanction of dismissal.

Leo, With the Knowledge of Eaton's Ethics Office and Chief Information Officer, Interferes With O'Flaherty's Efforts to Comply with the Court's Order

59. On or about February 1, 2008, O'Flaherty and other lawyers involved in the Frisby litigation received an Order from Judge Yerger in the Frisby litigation requiring Eaton to preserve evidence relating to the Peters/DeLaughter inquiry (hereafter, "the preservation order").

60. When O'Flaherty received the preservation order, she immediately forwarded it to McGuire.

61. O'Flaherty took all reasonable steps to place a "litigation hold" regarding all documents and emails that related to the Peters/DeLaughter inquiry.

62. O'Flaherty worked with Jeff Miller in the Eaton Information Technology Department ("IT"), and Jack Matejka, the Eaton Vice President of IT, to ensure that Eaton complied with the preservation order.

63. O'Flaherty created a folder, named it "Eaton v Frisby-Order to Preserve" and maintained her notes detailing her effort to comply with the preservation order.

64. O'Flaherty forwarded the preservation order to Miller to ensure that IT took all steps necessary to comply.

65. The weekend after she received the preservation order, O'Flaherty received a meeting notice from Matejka for that Monday.

66. O'Flaherty invited Leo to the Monday meeting.

67. That Monday, O'Flaherty met with Matejka and Miller.

68. Leo did not attend the meeting with O'Flaherty, Matejka, and Miller.

69. O'Flaherty was told that IT would make images of the hard drives of those Eaton employees who likely had relevant documents, including O'Flaherty.

70. The Court subsequently ordered Eaton to produce, for *in camera* inspection, all documents relating to the Peters'/DeLaughter inquiry.

71. O'Flaherty worked with Leo, Miller, and Matejka to comply with the Court's order to produce documents.

72. O'Flaherty assumed primary responsibility to gather documents relevant to the Court's inquiry from the Eaton legal department hard copy files, and Miller assumed primary responsibility to cull the relevant electronically stored documents, including emails.

73. O'Flaherty was told that the hard drive images made by Eaton's IT department would be electronically searched for all electronically stored documents, including emails, to comply with the Court's order.

74. Although she had been informed that her hard drive image would be searched for electronically stored documents, including emails, O'Flaherty also personally performed a keyword search of her own emails on her computer, using the Court's order to determine the key words and in consultation with Eaton's outside counsel.

75. O'Flaherty was meticulous and careful in her search.

76. O'Flaherty printed on her office printer each and every email she found on her computer as a result of her key word search.

77. Leo asked O'Flaherty if she had any responsive documents and she told him that she did.

78. Leo told O'Flaherty that he wanted to see all of her emails related to Ed Peters before they were sent to outside counsel.

79. After performing the search of her emails, O'Flaherty highlighted references to Peters in the emails she printed, placed them in a manila folder, and either gave the folder directly to Leo or left it in his office.

80. Because she had no reason to suspect that Leo would remove anything from the folder, O'Flaherty neither copied the folder nor indexed the folder before providing it to Leo.

81. Because she had no reason to suspect that Leo would remove anything from the folder, O'Flaherty did not take any other steps to prevent Leo from removing evidence from the folder or ensure that Leo did not remove evidence from the folder.

82. Leo eventually returned the folder to O'Flaherty, and she made arrangements to have it copied and sent to outside counsel.

83. Leo told O'Flaherty that he and McGuire would search their own files and computers for responsive documents.

84. McGuire gave one or more emails responsive to the inquiry to Leo.

85. Leo later told O'Flaherty that neither he nor McGuire had any responsive emails.

86. Unbeknownst to O'Flaherty, Leo did, in fact, have responsive emails, but he did not provide them to O'Flaherty at that time.

87. O'Flaherty asked Eaton attorney Terry Szmagala, and Eaton non-attorney assistants Bruce Reiman and Terry Thomas, to search their computers and files for responsive documents. These individuals provided documents to O'Flaherty.

88. After O'Flaherty gave Leo the emails she had printed, Leo told her that there were a couple of emails that could present a problem for Eaton.

89. O'Flaherty, along with Eaton legal assistant Terry Thomas, searched the Eaton litigation hard copy file on the litigation shelves, gathered all notes and correspondence from that file that contained any of the search terms, had them copied and produced them to Eaton outside counsel at Quarles Brady.

90. Upon information and belief, all responsive documents that were in the hard copy files in 2008 were provided to Eaton's outside counsel at Quarles Brady.

91. At or about that same time, Leo directed O'Flaherty to have a copy of all responsive documents sent to Richard Owens at L&W.

92. Leo told O'Flaherty that McGuire had asked L&W to review the Peters/Judge DeLaughter issue.

93. After O'Flaherty made arrangements with the Eaton IT department to have various hard drives, including her own, imaged and searched for documents relevant to the Court's

inquiry, Leo told Miller not to have the hard drive images of the Eaton in-house attorneys searched for relevant emails.

94. Miller believed Leo's instruction had a nefarious purpose.

95. Miller consulted with his supervisor, Matejka, regarding Leo's instruction.

96. Matejka consulted with his supervisor, Bill Blausey, the Eaton Chief Information Officer, about Leo's instruction..

97. Blausey consulted with McGuire about Leo's instruction. That's not true, this not on in any of the testi-

98. Miller, Matejka, and/or Blausey consulted with the Eaton Ethics Office regarding Leo's instruction not to search the images of the hard drives of Eaton's in-house attorneys for relevant emails.

99. At that time, Eaton's Ethics Office was or should have been aware that Eaton had previously been sanctioned $1.56 million for discovery failures in the same case, was then the subject of an inquiry by the Court to determine whether it had improperly influenced Judge DeLaughter, who was then under federal indictment.

100. Eaton's Ethics office instructed Miller, Matejka and/or Blausey that in the future, hard drive images should be search for emails but that, in this case, they should follow Leo's instruction not to search for emails.

101. As a result the images of the hard drives of Eaton's in-house attorneys were not searched in 2008 for relevant emails to produce to the Court in response to the Peters/DeLaughter inquiry or to the Frisby Defendants in response to their discovery requests.

102. O'Flaherty was not made aware until 2012 that the images of the hard drives of Eaton's in-house attorneys had not been searched for relevant emails.

103. In or around August 2008, Eaton's outside counsel at Quarles & Brady asked the Eaton legal department to summarize the steps taken to collect responsive documents in an affidavit.

104. O'Flaherty discussed the affidavit with Jeff Miller and created a draft affidavit, which she sent to Leo for review.

105. Leo worked with Eaton outside counsel at Quarles and Brady to finalize the affidavit and he signed it himself.

106. O'Flaherty was not involved in any discussion or decision making about who would sign the affidavit or what the language of the final draft would be.

107. O'Flaherty did not know that the final draft of the affidavit, signed by Leo, contained false information regarding what computers were searched and the scope of the search.

108. In or near October 2009, during a deposition taken as part of the Peters/DeLaughter inquiry, the Frisby Defendants/Counterclaim plaintiffs learned of the existence of an email to and/or from an attorney at Quarles and Brady that was relevant to the Peters/DeLaughter inquiry, but had not previously been produced.

109. On or about October 15, 2009, pursuant to a court order, Eaton submitted a filing to the court certifying that all documents relevant to the Peters/DeLaughter inquiry had been produced.

110. On or about October 27, 2009, Leo was deposed as part of the Peters/DeLaughter inquiry.

111. After Leo's deposition, Leo informed Eaton's outside counsel that additional emails were in his possession that were not produced in 2008.

112. On November 9, 2009, Leo submitted an affidavit to the court, identifying an archived email folder on his computer containing emails relevant to the Peters/DeLaughter inquiry, which folder had not been searched for discoverable documents, and stating that his earlier filed affidavit had been inaccurate.

113. O'Flaherty was not informed, and was not otherwise aware, that Leo had not previously produced all relevant emails that were in his possession.

114. Leo was not written up, suspended, placed on probation, terminated, or otherwise disciplined for his failure to locate and produce all emails in his possession in 2008.

Discovery of "The Two Emails"

115. In or about January 2011, Leo told O'Flaherty that McGuire and Cutler wanted to see copies of Leo's emails to and from Peters.

116. Leo and O'Flaherty then began a conversation about the Frisby litigation, which evolved into a heated argument.

117. O'Flaherty told Leo that it was unfair for him to criticize her when he had been in charge of the Frisby case from the beginning and had been managing outside counsel, often without involving her.

118. At or around that same time, O'Flaherty told Leo that she felt her reputation had been damaged because of decisions she had not made in the Frisby litigation.

119. After they argued, Leo asked O'Flaherty whether she would like to be taken off the Frisby litigation.

120. O'Flaherty subsequently talked to McGuire about her concerns in continuing to work with Leo on the Frisby litigation. McGuire agreed to change the in-house staffing on the

Frisby litigation and to remove O'Flaherty from the case. He assured O'Flaherty that there would be no negative consequences as a result of that change. O'Flaherty did no further work on the Frisby litigation after that time.

121. The image of O'Flaherty's hard drive was eventually searched for emails relating to Peters in relation to a shareholders' lawsuit that had been filed against Eaton.

122. In February 2012, one of Eaton's attorneys noted that two emails found on O'Flaherty's computer hard drive image (hereafter "the two emails") had not been produced as part of the Peters/DeLaughter inquiry in 2008.

123. One of the two emails is an exchange between Leo and Peters, which was forwarded to Eaton outside counsel, Michael Schaalman of Quarles and Brady, and O'Flaherty, dated March 20-23, 2007.

124. The second of the two emails is an October 16, 2007 email exchange between Szmagala and Leo, commenting on an earlier exchange between Leo and Peters. O'Flaherty was copied on the exchange between Szmagala and Leo.

125. O'Flaherty was "copied" on both of the emails. Leo was a party to both of them.

126. The two emails contained the key words O'Flaherty had searched for in 2008.

127. O'Flaherty printed both emails in 2008.

128. Both emails were in the folder O'Flaherty gave to Leo in 2008.

129. If a search for emails had been performed on O'Flaherty's hard drive image in 2008, the two emails would have been found in that search and, presumably, produced in 2008.

130. McGuire learned no later than February 2012 that the newly discovered evidence had not yet been produced to the Court or defense counsel in the Frisby litigation.

131. It was not until April 17, 2012, that Eaton first produced the two emails to the Court in the Frisby litigation.

132. On or about the week of April 16, 2012, Leo came into O'Flaherty's office and placed the two emails on her desk.

133. Leo told O'Flaherty that Brandt, while preparing or giving a presentation to Eaton's Board of Directors or a Committee of the Board, realized that the two emails had not been produced in the Frisby matter.

134. O'Flaherty learned, for the first time, that these emails had not been produced when Leo placed them on her desk the week of April 16, 2012.

135. Leo told O'Flaherty that the law firm of Latham &Watkins ("L&W") had been retained to investigate why the two emails had not been produced in discovery in 2008.

136. Leo characterized the two emails as "newly discovered" evidence.

137. Leo told O'Flaherty that the two emails had been "recently found" on her computer hard drive.

138. On or about May 10, 2012, O'Flaherty was instructed to meet with attorneys from L&W.

139. At that time, the L&W team had already met with Jeff Miller.

140. Present at the meeting were O'Flaherty, L&W attorneys Maria Barton and Daniel Adams, attorney Kathy Smith from the law firm of Corlew Munford & Smith, and Eaton outside counsel John P. Sneed of the Wise Carter Child & Caraway firm in Jackson, Mississippi (hereafter "Sneed").

141. During that meeting, Barton showed O'Flaherty a printout of the two emails.

142. O'Flaherty questioned how it could have happened that the two emails had not been produced.

143. O'Flaherty saw that on Barton's printout of the two emails, one showed metadata.

144. O'Flaherty asked Barton whether the metadata revealed when it had been printed.

145. O'Flaherty questioned whether a specific set of numbers in the metadata reflected that it was printed on her office personal printer.

146. Barton told O'Flaherty that the number did not show when it had been printed.

147. O'Flaherty told Barton that when she collected her own emails, she was meticulous and careful.

148. Barton responded that she could tell from O'Flaherty's notes that she had been meticulous and careful.

149. Barton asked O'Flaherty during the meeting whether Leo could have removed two emails from the manila folder of responsive emails she provided to him in 2008.

150. Barton asked O'Flaherty whether Leo could have removed the two emails because Barton had reason to suspect that Leo had made a deliberate attempt to hide the two emails during discovery in the Peters/DeLaughter inquiry.

151. O'Flaherty did not know that Leo had insisted that hard drive images not be searched for emails, and she was unaware of other facts known to Barton, and therefore she had no reason to suspect that Leo had made a deliberate attempt to hide the two emails during discovery in the Peters/DeLaughter inquiry.

152. O'Flaherty responded that it was hard for her to imagine that someone she worked with for over 20 years could do something like that.

153. Barton and the other attorneys present at the meeting asked O'Flaherty if she had ever told IT not to search for emails on the imaged hard drives. O'Flaherty responded that she had not.

154. Barton and the other attorneys present at the meeting asked O'Flaherty if she ever heard Leo tell anyone in the Eaton IT department not to search for emails on the imaged hard drives. She responded that she had not.

155. O'Flaherty added that it was her understanding that in 2008, Eaton had retained a third party company to make images of, and search, the hard drives at issue to ensure impartiality.

156. O'Flaherty noted that she had received a work order from that company that described that they would do the searches on the hard drive images.

157. O'Flaherty later provided a copy of that work order to the attorneys at the meeting.

158. Toward the end of the meeting, O'Flaherty became emotional, and both Barton and Sneed assured her that she had no reason to feel bad because she had not deleted the emails in question like others had.

Eaton Terminates O'Flaherty to Defraud the Court About the Newly Discovered Emails and Because O'Flaherty Complied With the Court's Order to Preserve Evidence

159. On or about May 10, 2012, the Mississippi court in the Frisby litigation ordered Eaton to file affidavit testimony by Cutler, McGuire, and several Eaton in-house and outside counsel providing certain information, including "full and detailed explanations as to: the withholding of the newly discovered documents. . . and exactly why the documents were not previously discovered." (hereafter "May 10 Order").

160. In the May 10 Order, the term "newly discovered documents" referred to the two emails.

161. The May 10 Order required Eaton to explain, in detail, why the two emails had not been produced in 2008 during the Peters/DeLaughter inquiry.

162. L&W worked in concert with Eaton to prepare a response to the May 10 Order.

163. On or about May 15, 2012, Defendant Cutler met Brandt, Sneed, Defendant McGuire, and in-house Eaton attorney Robert Psaropoulos.

164. The purpose of the May 15, 2012 meeting (hereafter "May 15 meeting") was to discuss the May 10 Order and how to respond thereto.

165. Cutler, McGuire and/or Brandt decided, at or before the May 15 meeting, that Eaton would terminate the employment of Leo. They then decided to terminate the employment of O'Flaherty.

166. Cutler, McGuire and/or Brandt decided, at or before the May 15 meeting, to defraud the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs by claiming that the reason the two emails had not been produced was inadvertence on O'Flaherty's part.

167. Cutler, McGuire and/or Brandt decided, at or before the May 15 meeting, to defraud the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs by claiming that Eaton, through L&W, had investigated the circumstances that led to the failure to produce the two emails, and found no "evidence of a deliberate attempt to hide" the two emails.

168. It was untrue that Eaton and L&W found no "evidence of a deliberate attempt to hide" the two emails.

169. It was untrue that the two emails had not been produced because of inadvertence by O'Flaherty.

170. One of the reasons the two emails had not been produced was that everyone else who had received them had deleted them.

171. One of the reasons the two emails had not been produced was that Leo had intentionally interfered with O'Flaherty's efforts to ensure that Eaton complied with the Court's order.

172. At or immediately after the May 15 meeting, Eaton, Cutler, McGuire and/or Brandt each had knowledge that in 2008, O'Flaherty, Matejka, and Miller determined that images of O'Flaherty's hard drive (and others) should be searched to ensure compliance with the Court's order to produce documents relating to the Peters/DeLaughter inquiry.

173. At or immediately after the May 15 meeting, Eaton, Cutler, McGuire and/or Brandt had knowledge that Leo specifically instructed Miller not to have the images of the hard drives searched for emails.

174. At or immediately after the May 15 meeting, Eaton, Cutler, McGuire and/or Brandt had knowledge that Miller had escalated the issue of whether or not to search the hard drive images for emails all the way to the Chief Information Officer and the Eaton Ethics Office, and that Eaton, through its managers, had instructed Miller not to have the email search conducted.

175. At or immediately after the May 15 meeting, Eaton, Cutler, McGuire and/or Brandt each had knowledge that O'Flaherty had performed a key word search of her own emails, printed the emails she found, and provided the printed emails in a folder to Leo.

176. At or immediately after the May 15 meeting, Eaton, Cutler, McGuire and/or Brandt each had knowledge that Leo had possession of the folder containing O'Flaherty's printed

emails, and had the opportunity to remove the two emails before the folder was copied and sent to outside counsel for production.

177. At or immediately after the May 15 meeting, Eaton, Cutler, McGuire and/or Brandt each had reason to suspect that Leo had intentionally removed the two emails from the folder provided to him by O'Flaherty before the folder was copied and sent to outside counsel for production.

178. In response to the May 10 Order, Eaton, Cutler, McGuire and Brandt submitted affidavits and a Memorandum prepared by L&W dated May 17, 2012 (hereafter "The Latham Report") to the Court and the Frisby Defendants/Counterclaim Plaintiffs.

179. Both Cutler and McGuire, in their affidavits, admit that they are aware that the Latham Report was provided to the Court as part of Eaton's response to the May 10 Order.

180. Despite knowledge to the contrary, the Latham Report states, "Latham did not find any evidence of a deliberate attempt to hide the March 23 or October 16 emails during discovery in the Peters Inquiry."

181. In fact, Latham found evidence of a deliberate attempt, by Leo, to hide the two emails during discovery in the Peters/DeLaughter Inquiry, and Cutler, McGuire and Eaton were aware of that evidence.

182. The Latham Report states that, "According to the IT employee responsible for the forensic analysis in August 2008, he did not search the PST files on the hard drive images upon specific instructions from Mr. Leo." The report also notes that Leo denied that he instructed IT not to have the hard drives searched for emails.

183. At the time the Latham Report was submitted to the Court and the Frisby Defendants/Counterclaim Plaintiffs, Eaton, Cutler, McGuire and Brandt knew that Leo was not telling the truth when he denied having given the instruction that the hard drive images not be searched for emails.

184. At the time the Latham Report was submitted to the Court and the Frisby Defendants/Counterclaim Plaintiffs, Eaton, Cutler, McGuire and Brandt knew that three IT employees, including the Chief Information Officer, and the Eaton Ethics Office confirmed that Leo had instructed Miller not to search the hard drive images for emails in 2008.

185. The Latham Report intentionally withheld from the Court and the Frisby Defendants/Counterclaim Plaintiffs the fact that the Eaton Chief Information Officer and one or more individual in the Eaton Ethics Office were also involved in the decision not to search the hard drive images for emails.

186. In his affidavit, McGuire falsely stated that O'Flaherty's termination was necessary "to help restore the integrity of (Eaton's) processes and (Eaton's) commitment to excellence."

187. On or about May 17, 2012, the same day Eaton filed its response to the May 10 Order, Eaton, Cutler and/or McGuire terminated O'Flaherty's employment.

188. Neither Miller, nor Matejka, nor Blausey, nor anyone in the Eaton Ethics Office who was involved in the decision not to have the hard drive images searched for emails were terminated.

189. At the time Eaton, Cutler, and/or McGuire fired O'Flaherty, they were not aware of any reason to believe that O'Flaherty would engage or had engaged in any dishonest or unethical behavior.

190. When McGuire told O'Flaherty that her employment was terminated, McGuire referred to "the mess in Mississippi."

191. When he told O'Flaherty that her employment was terminated, McGuire told her that "Sandy" (referring to Cutler) had to prepare an affidavit.

192. When he told O'Flaherty that her employment was terminated, McGuire told her that the two documents in question were found on her hard drive.

193. When he told O'Flaherty that her employment was terminated, McGuire told her that it "was difficult for him", but that he had to separate her from the company.

PROCEDURAL ALLEGATIONS

194. At the time of her termination, O'Flaherty was over the age of forty.

195. O'Flaherty is female.

196. At all times relevant to this lawsuit, O'Flaherty was an "employee" within the meaning of Chapter 4112 of the Ohio Revised Code.

197. At all times relevant to this lawsuit, Eaton, Cutler, McGuire were each "employers" and "persons" within the meaning of Chapter 4112 of the Ohio Revised Code.

FIRST CLAIM FOR RELIEF – CIVIL CONSPIRACY

198 Defendants Eaton, Cutler, McGuire, Brandt and L&W agreed that Eaton would terminate O'Flaherty's employment for the purpose of defrauding the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs that their investigation revealed that the

reason the two emails were not produced was inadvertence on O'Flaherty's part, and their investigation revealed no "evidence of a deliberate attempt to hide" the two emails during discovery in the Peters/DeLaughter inquiry.

199. Defendants Eaton, Cutler, McGuire, Brandt and L&W had a common understanding or design to defraud the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs.

200. Defendants Eaton, Cutler, McGuire, Brandt and L&W acted purposefully and/or without a reasonable or lawful excuse in terminating O'Flaherty for the purpose of defrauding the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs.

201. The conduct of Eaton, Cutler, McGuire, Brandt and L&W, in attempting to defraud the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs, advising them that they found "no evidence" of a deliberate attempt to hide the two emails, was an unlawful act.

202. L&W and Eaton are not members of the same legal entity.

203. Brandt and L&W were not providing legal advice or representation to Eaton, Cutler, and/or McGuire when they submitted the Latham Report.

204. Cutler and McGuire were acting outside the scope of their agency and/or employment with Eaton in deciding to terminate O'Flaherty for the purpose of defrauding the court and Frisby Defendants/Counterclaim Plaintiffs.

205. Eaton ratified the misconduct of Cutler and McGuire.

206. The conduct of Defendants Eaton, Cutler, McGuire, Brandt and L&W, described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

207. As a direct and proximate consequence of Defendant Eaton, Cutler, McGuire and L&W's unlawful misconduct, described above, O'Flaherty suffered emotional distress, humiliation and damage to her reputation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

SECOND CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH EMPLOYMENT RELATIONSHIP

208. Plaintiff hereby incorporates by reference each and every allegation set forth above as if fully rewritten herein.

209. O'Flaherty had an employment relationship with Eaton.

210. Defendants Brandt and L&W had knowledge of O'Flaherty's employment relationship with Eaton.

211. Defendants Brandt and L&W intentionally acted to cause Eaton to terminate O'Flaherty's employment.

212. Defendants Brandt and L&W lacked legal justification to interfere with O'Flaherty's employment.

213. Defendants Brandt and L&W, in interfering with O'Flaherty's employment, sought to assist Eaton in perpetrating a fraud on the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs.

214. The conduct of Defendants, as described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

215. As a direct and proximate consequence of Defendants Brandt and L&W's unlawful misconduct, described above, O'Flaherty suffered emotional distress, humiliation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

THIRD CLAIM FOR RELIEF
FALSE LIGHT INVASION OF PRIVACY

216. Plaintiff hereby incorporates by reference each and every allegation set forth above as if fully rewritten herein.

217. Defendants Eaton, Cutler, McGuire, Brandt and L&W placed O'Flaherty in a false light before the public.

218. The false light in which O'Flaherty was placed would be highly offensive to a reasonable person.

219. Defendants Eaton, Cutler, McGuire, Brandt and L&W had knowledge of the falsity of the publicized matter and the false light in which it placed O'Flaherty or acted with reckless disregard as to the falsity of the publicized matter and the false light in which it placed O'Flaherty.

220. The conduct of Defendants Eaton, Cutler, McGuire, Brandt and L&W, as described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

221. As a direct and proximate consequence of Defendants Eaton, Cutler, McGuire, Brandt and L&W's unlawful misconduct, described above, O'Flaherty suffered emotional distress, humiliation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

FOURTH CLAIM FOR RELIEF – WRONGFUL DISCHARGE

222. Defendant Eaton terminated O'Flaherty's employment for the purpose of defrauding the Mississippi Court and the Frisby Defendants/Counterclaim Plaintiffs regarding the reason the two emails were not produced, and/or because O'Flaherty, unlike others in the Eaton legal department, preserved the two emails and attempted to comply with the orders of the Mississippi court with regard to the Peters/DeLaughter inquiry.

223. Ohio has a strong public policy favoring attorneys and parties in civil disputes being candid with the courts, complying with courts' orders and discovery rules, and preserving evidence, which policies are set forth in the Ohio Rules of Civil Procedure, the Ohio Rules of Professional Conduct, Ohio common law, and Ohio Revised Code Section 2323.51.

224. Eaton's conduct, in terminating O'Flaherty, jeopardizes public policy.

225. Eaton's conduct related to the above-stated public policies motivated O'Flaherty's dismissal.

226. Eaton terminated O'Flaherty in violation of well established public policy.

227. Eaton lacked any overriding business justification for its decision to terminate O'Flaherty.

228. Eaton's conduct, described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

229. As a direct and proximate result of Defendant Eaton unlawful misconduct, in violation of public policy, described above, O'Flaherty suffered emotional distress, humiliation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

FIFTH CLAIM FOR RELIEF – GENDER DISCRIMINATION

230. O'Flaherty hereby incorporates all allegations set forth above as if fully rewritten herein.

231. During the course of her employment with Defendants and specifically in the last five and one half years of her employment with Eaton, Defendants Eaton, Leo and/or McGuire discriminated against O'Flaherty in the terms and conditions of her employment in violation of Ohio Revise Code Section 4112 *et seq.*

232. Defendants Eaton, Cutler and/or McGuire terminated O'Flaherty's employment at least in part. because of her gender, in violation of Ohio Revise Code Section 4112 *et seq.*

233. Defendants Eaton, Cutler and/or McGuire replaced O'Flaherty with a male and/or otherwise treated similarly situated males differently.

234. The conduct of Defendants, as described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

235. As a direct and proximate consequence of these Defendants' unlawful and discriminatory misconduct, described above, O'Flaherty suffered emotional distress and humiliation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has

been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

SIXTH CLAIM FOR RELIEF – AGE DISCRIMINATION

236. O'Flaherty hereby incorporates all allegations set forth above as if fully rewritten herein.

237. Defendant Eaton has entered into a tolling agreement with Plaintiff which tolls the statute of limitations of any claim she may have, including her claim for age discrimination, up to and through August 12, 2013, and therefore this claim is timely.

238. In terminating her employment, Defendant Eaton took adverse action against O'Flaherty because of her age in violation of Ohio Revise Code Section 4112 *et seq.*

239. Defendants replaced O'Flaherty with a substantially younger employee.

240. As a direct and proximate consequence of Defendant Eaton's unlawful and discriminatory misconduct, described above, O'Flaherty suffered emotional distress, humiliation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

241. The conduct of Defendants, as described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

SEVENTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH EMPLOYMENT RELATIONSHIP

242. Plaintiff hereby incorporates by reference each and every allegation set forth above as if fully rewritten herein.

243. O'Flaherty had an employment relationship with Eaton.

244. Defendant Leo had knowledge of O'Flaherty's employment relationship with Eaton.

245. Defendant Leo intentionally and tortiously acted to interfere with O'Flaherty's employment relationship by preventing her from complying with court orders and by making untrue statements about O'Flaherty's employment.

246. In interfering with O'Flaherty's employment relationship with Eaton, Leo was acting outside the course and scope of his employment with Eaton.

247. Defendant Leo lacked legal justification to interfere with O'Flaherty's employment.

248. The conduct of Defendant Leo, as described above, was intentional and done maliciously or with conscious disregard of the rights of Plaintiff.

249. As a direct and proximate consequence of Defendant Leo's unlawful misconduct, described above, O'Flaherty suffered emotional distress, humiliation, lost salary, wages and benefits, incurred attorneys' fees and costs of litigation, and has been otherwise injured. Some or all of her damages will continue to accrue indefinitely into the future.

PRAYER FOR RELIEF

WHEREFORE, O'Flaherty prays for judgment against Defendants and for: compensatory damages including an amount sufficient to compensate her for her past and future lost wages, income and benefits, damage to reputation, humiliation, upset and emotional distress and other injury, damage, and loss; punitive damages in an amount sufficient to punish and deter Defendants' wrongful misconduct; reinstatement and other equitable relief; attorneys' fees and costs of suit; and, for such other relief as the Court deems just, all in an amount in excess of twenty-five thousand dollars.

JURY DEMAND

A trial by jury is hereby demanded in the within matter in the maximum number of jurors allowed by law.

Respectfully submitted,

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